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July 31, 2015

BY ECF

The Honorable Ronnie Abrams
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10006

Re: United States v. Shu Feng Xia, 12-CR-934-9 (RA)

Dear Judge Abrams:

Please accept this letter in lieu of a formal sentencing memorandum submitted on behalf of Shu Feng Xia.

Based upon the reasons set forth herein, we respectfully request Mr. Xia be sentenced to a term of time served, without imposition of a term of supervised release (the "Requested Sentence").

We seek the Requested Sentence for the following reasons:

First, by reference hereto, we incorporate and urge the Court to consider the information set forth in the Mr. Xia's initial and well detailed sentencing submission, dated July 25, 2014 (Dkt. 255)(the "Initial Sentencing Submission").

The Initial Sentencing Submission provides a thorough analysis of the relevant factors under §3553(a) and includes compelling personal information about:

- 1) Mr. Xia's family history;
- 2) Mr. Xia's reputation as a hard-working, selfless and honest person;
- 3) How Mr. Xia's family depends upon him for financial and emotional support;
- 4) Mr. Xia's Remorse;
- 5) Potential collateral consequences of Mr. Xia's conviction; and
- 6) Mr. Xia's limited role in the offense.

We contend that the information set forth in the Initial Sentencing Submission offers just cause for the imposition of the Requested Sentence.

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Second, Mr. Xia originally was sentenced to “one year and a day” by Your Honor. He surrendered to his designated facility on October 10, 2014. Consequently, when he appears for resentencing on August 12, 2015, he will have been in custody for a period of 10 months and two days.¹ Including consideration for good time credit, this term approximates a term which is served for a sentence of “one year and a day.”²

Third, assuming that there is not a detainer on Mr. Xia, if sentenced to time served, he will be released from the courthouse and allowed to go home with his family. However, if he is sentenced to a definite term -- even one that is less than the time he has already served (for example, if he sentenced to 9 months) -- Mr. Xia will not be immediately released from the courthouse. Instead, he will be transported either to MDC or MCC. Thereafter, following issuance of the amended judgment of conviction, the BOP will perform a revised sentence calculation and determine his revised release date. This process might take several days or possibly even longer. During this period, Mr. Xia will remain in custody.

Fourth, imposition of a the Requested Sentence is consistent with this Court’s Opinion & Order dated July 20, 2015 (Dkt. 553) which granted Mr. Xia’s motion for relief pursuant to 28 U.S.C. §2255. We note that the Opinion & Order states:

After considering the possible effect of receiving a sentence of over one year in prison” with respect to Xia’s co-defendant Guo Qin Miao, another noncitizen . . . this Court sentenced her to 11 months incarceration, more than what Xia would serve if awarded “good time” credit, but less than the one year that would have made Miao an aggravated felon under the INA. The Court would similarly have been willing to consider this factor with respect to Xia. (Opinion & Order, p.17).

Here, like Ms. Miao, the Requested Sentence will not result in Mr. Xia deemed an aggravated felon under the INA, subject to mandatory deportation.

Fifth, in consideration of 18 U.S.C. §3553(a)(6), and as noted in the Supplemental Memorandum of Law we submitted in further support of Mr. Xia’s Motion pursuant to 28 U.S.C.

¹According to the PSR, Mr. Xia was arrested on December 18, 2012 and released the same day. Upon information and belief he remained out on bond until he surrendered on October 10, 2014.

²According to BOP records, Mr. Xia’s release date is August 23, 2015 which amounts to a term of approximately ten months and thirteen days.

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§2255 petition (Dkt. 531), imposition of the Requested Sentence will not result in an unwarranted sentencing disparity between Mr. Xia and similarly situated co-defendants.

As noted in our Supplemental Memorandum: 1) co-defendant Riu Yang who, according to the Government, had the same culpability as Mr. Xia, was sentenced to a term of imprisonment of 3 months; 2) co-defendant, Quo Qin Miao who, according to the Government was more culpable than Mr. Xia, was sentenced to a term of 11 months' incarceration; and 3) co-defendant Wen Ting Zheng was sentenced to a term of 1 month in prison. (Pet. Supp. Memo. pp. 10-16). As such, sentencing Mr. Xia to time served -- where he already has been in custody for 10 months and 2 days -- will not result in an unwarranted disparity compared to the sentences of these co-defendants.

Sixth, it appears that Mr. Xia has been an exemplary inmate during the course of his term of incarceration. We have been in contact with his case manager at Moshannon Valley Correctional Center. She has provided documentation which indicates:

- 1) Mr. Xia has not been subject to any disciplinary infractions;
- 2) Mr. Xia has been steadily employed working in the food service department and as an orderly (the report indicates there was a one month period where he was not working due to "med convalescing-temp." This was due to a wrist injury he suffered while playing basketball); and
- 3) Mr. Xia regularly participates in religious services; and, has enrolled in educational courses.

(Copies of these records are attached to this letter).

Seventh, in seeking the Requested Sentence, we respectfully request that the Court not impose a term of supervised release. We submit, in this case, there does not appear to be a need for imposition of a term of supervised release.

As noted in the PSR, in this case, the statutory term of supervised release, per 18 U.S.C. §3583(b)(2), is discretionary up to three years, without a required mandatory minimum term. (PSR ¶106). 18 U.S.C. §3583(b)(2) indicates a court, "in determining whether to include a term of supervised release . . . shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)." We note that the Initial Sentencing Submission contains a thorough analysis of the §3553(a) factors in regard to the need for imposition of a jail sentence upon Mr. Xia. We submit the same analysis applies to a consideration of whether the imposition of a term of supervised release is necessary, and in Mr. Xia's case, supports finding it is not necessary.

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In addition to the information submitted in the Initial Sentencing Submission, we note that while this case was pending, during the period of one year and ten months, from December 18, 2012 through his surrender on October 10, 2014, Mr. Xia was under supervision by Pretrial Services. It is our understanding Mr. Xia complied with the terms of his pretrial supervision without incident.

Wherefore, we respectfully submit that the Requested Sentence -- time served without a term of supervised release -- is a just and fair sentence in this case.

Respectfully submitted,

/s/

Randa D. Maher

Counsel for Mr. Shu Feng Xia

TO: AUSA Rebecca Mermelstein
AUSA Patrick Egan

ATTACHMENTS

MVCCD	*	INMATE DISCIPLINE DATA	*	07-28-2015
PAGE 001 OF 001	*	CHRONOLOGICAL DISCIPLINARY RECORD	*	09:52:01

REGISTER NO: 67791-054 NAME..: XIA, SHU FENG

FUNCTION...: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 07-28-2015

G5463 NO ENTRIES EXIST IN CHRONOLOGICAL LOG FOR TIME PERIOD REQUESTED

MVCCD 531.01 * INMATE HISTORY * 07-28-2015
PAGE 001 OF 001 * WRK DETAIL * 09:50:05

REG NO.: 67791-054 NAME: XIA, SHU FENG
CATEGORY: WRK FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT DESCRIPTION	START DATE/TIME	STOP DATE/TIME
MVC	CORRSRVCPM COMPOUND ORDERLY	07-15-2015 0925	CURRENT
MVC	CONVL-TEMP NO WORK, MED CONVALESCING-TEMP	06-04-2015 1323	07-15-2015 0925
MVC	CORRSRVCPM COMPOUND ORDERLY	04-03-2015 0001	06-04-2015 1323
MVC	FOODSVCAM1 FOOD SERVICE AM SHIFT 1	11-04-2014 0001	04-03-2015 0001
MVC	A&O COMPLETING A&O	10-10-2014 1255	11-04-2014 0001

G0000 TRANSACTION SUCCESSFULLY COMPLETED

MVCCD * INMATE EDUCATION DATA * 07-28-2015
 PAGE 001 OF 001 * TRANSCRIPT * 09:49:33

REGISTER NO: 67791-054 NAME.: XIA FUNC: PRT
 FORMAT.....: TRANSCRIPT RSP OF: MVC-MOSHANNON VALLEY CI

----- EDUCATION INFORMATION -----

FACL	ASSIGNMENT DESCRIPTION	START DATE/TIME	STOP DATE/TIME
MVC	ESL EXEMPT ESL NEED-PERMANENTLY EXEMPT	10-21-2014 1051	CURRENT
MVC	GED EN ENROLL GED NON-PROMOTABLE	10-21-2014 1051	CURRENT

----- EDUCATION COURSES -----

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
MVC	ESL BEGINNING LITERACY	07-02-2015	CURRENT				

----- HIGH TEST SCORES -----

TEST	SUBTEST	SCORE	TEST DATE	TEST FACL	FORM	STATE
CASAS	LIST PLACE	198.0	01-27-2015	MVC	20	
	READ PLACE	185.0	01-27-2015	MVC	20	

G0000 TRANSACTION SUCCESSFULLY COMPLETED

MEMORANDUM



Date: June 8, 2015

To: ~~Whom it may concern~~

From: Ed Roberts, Chaplain

Re: Participation in Religious Services

Moshannon Valley
Correctional Center
555 GEO Drive
Philipsburg, PA 16866

www.geogroup.com

This is to report the participation of Inmate Shu Feng Xia from Unit C in the following religious programs and services since his arrival in October 2014:

1. New Shepherd's Christian Service (a Christian religious service lead by inmates) since October 2014
2. General Christian Service (lead by the Chaplain/Pastor) since October 2014